

## **ORDINANCE NO. O2016-008**

**AN ORDINANCE** of the City Council of the City of Tumwater, Washington, amending Chapter 3.50 Impact Fees and Chapter 3.52 Tumwater Park Impact Fees of the Tumwater Municipal Code to include a deferral program for single-family detached and attached residential construction.

**WHEREAS**, with the adoption of Engrossed Senate Bill (ESB) 5923 in April 2015, the Legislature amended Revised Code of Washington (RCW) 82.02.050 so as to mandate that cities collecting impact fees adopt and maintain a deferral program for the collection of impact fees for single-family detached and attached residential construction; and

**WHEREAS**, ESB 5923 sets forth specific requirements for the deferral program while also allowing the City certain discretion, including the time for deferral and the collection of an administrative fee; and

**WHEREAS**, pursuant to this legislative mandate, the City seeks to amend Chapter 3.50 and Chapter 3.52 to establish an impact fee deferral program for single-family detached and attached residential construction;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 3.50.030 of the Tumwater Municipal Code is hereby amended to read as follows:

### **3.50.030 Assessment of impact fees.**

A. The city shall collect impact fees, as set forth in TMC 3.50.125, 3.50.130, 3.50.135 and 3.50.140, from any applicant seeking development approval from the city, for any development activity within the city, where such development activity requires the issuance of a building permit, except that nonresidential development shall not be assessed an Olympia schools impact fee, or a Tumwater schools impact fee.

B. Impact fees shall be collected from the feepayer prior to issuing the development approval, using the impact fee schedules in effect on the date of the application for the development activity, except as provided in 3.50.035.

### **3.50.35 Single-Family Residential Deferral Program. An applicant for**

a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment until final inspection or 18 months from the date of original building permit issuance, whichever occurs first.

A. For the purposes of this deferral program.

“Applicant” includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

B. An applicant for deferral must request the deferral no later than the time of application for a building permit. Any request not so made shall be deemed waived.

C. To receive a deferral, an applicant must:

1. Submit a deferred impact fee application and acknowledgment form for each single-family attached or detached residence for which the applicant wishes to defer payment of the impact fees;
2. Pay the applicable administrative fee per fee resolution;
3. Grant and record at the applicant’s expense a deferred impact fee lien in a form approved by the city against the property in favor of the city in the amount of the deferred impact fee that:
  - i. Includes the legal description, tax account number, and address of the property;
  - ii. Requires payment of the impact fees to the city prior to final inspection or 18 months from the date of original building permit issuance, whichever occurs first;
  - iii. Is signed by all owners of the property, with all signatures acknowledged as required for a deed and recorded in Thurston County;
  - iv. Binds all successors in title after the recordation; and
  - v. Is junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

D. The amount of impact fees deferred shall be determined by the fees in effect at the time the applicant applies for a deferral.

E. Prior to final inspection or 18 months from the date of original building permit issuance, the applicant may pay the deferred amount in installments, with no penalty for early payment.

F. The city shall withhold final inspection until the impact fees have been paid in full. Upon receipt of final payment of impact fees deferred under this subsection, the city shall execute a release of deferred impact fee lien for each single-family attached or detached residence for which the impact fees have been received. The applicant, or property owner at the time of release, shall be responsible for recording the lien release at his or her expense.

G. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection.

H. If impact fees are not paid in accordance with the deferral and in accordance with the term provisions established herein, the city may institute foreclosure proceedings in accordance with Chapter 61.12 RCW.

I. Each applicant for a single-family attached or detached residential construction permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals under this section for the first 20 single-family residential construction building permits.

**Section 2.** Section 3.52.070 of the Tumwater Municipal Code is hereby amended to read as follows:

**3.52.070 Computation of the park impact fee amount.**

A. Schedule. The regional/citywide and local park impact fee value per person shall be determined in accordance with the fee resolution adopted by the city council.

1. If a building permit is requested for mixed uses, then the fee shall be determined using the fee schedule by apportioning the space committed to uses specified on the schedule.

2. If the type of development activity that a residential building permit

is applied for is not specified in the fee schedule, the community development director shall use the fee applicable to the most comparable type of land use on the fee schedule. The community development director shall be guided in the selection of a comparable type by the Tumwater comprehensive plan, supporting documents of the Tumwater comprehensive park, recreation and open space plan, and the Tumwater zoning ordinance. If the community development director determines that there is not a comparable type of land use on the above fee schedule, then the community development director shall determine the appropriately discounted fee by considering demographic or other documentation that is available from state, local, and regional authorities.

3. In the case of change of use, redevelopment, or expansion or modification of an existing use that requires the issuance of a building permit or permit for mobile home installation, the impact fee shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use. The community development director shall be guided in this determination by the source and agencies listed in subsection (A)(2) of this section.

B. Calculation. If a developer opts not to have the impact fee determined according to subsection A of this section, then:

1. The developer shall prepare and submit to the community development director an independent fee calculation study for the land development activity for which a building permit or permit for mobile home installation is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made.

2. The community development director shall consider the documentation submitted by the developer but is not required to accept such documentation as he/she shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require the developer to submit additional or different documentation for consideration.

3. If an acceptable independent fee calculation study is not presented, the developer shall pay park impact fees based upon the schedule shown in subsection A of this section.

4. In cases where the developer requests an independent fee calculation, the costs of such calculation shall be borne by the developer.

C. Appeals.

1. Determinations made by the community development director pursuant to this section may be appealed to the hearing examiner by filing a written request with the community development director within ten days of the community development director's determination.
2. Any appeal of the decision of the city with regard to fee amounts shall follow the process for the appeal of the underlying development activity, as set forth in the Tumwater Municipal Code.
3. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

D. Payment of Fee.

1. Impact fees shall be imposed upon development activity in the city based upon the schedule set forth in subsection A of this section and may be collected by the city from any applicant where such development activity requires issuance of a residential building permit or a mobile home permit and the fee for the lot or unit has not been previously paid.
2. Impact fees shall be collected from the feepayer prior to issuing the building permit, using the impact fee schedules in effect on the date of the application for the building permit, except as provided in 3.52.070E.

E. Single-Family Residential Deferral Program. An applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment until final inspection or 18 months from the date of original building permit issuance, whichever occurs first. Deferral of impact fees are considered under the following conditions:

1. An applicant for deferral must request the deferral no later than the time of application for a building permit. Any request not so made shall be deemed waived.
2. For the purposes of this deferral program, "Applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.
3. To receive a deferral, an applicant must:
  - i. Submit a deferred impact fee application and acknowledgment form for each single-family attached or detached residence for which the

applicant wishes to defer payment of the impact fees;

ii. Pay the applicable administrative fee per fee resolution;

iii. Grant and record at the applicant's expense a deferred impact fee lien in a form approved by the city against the property in favor of the city in the amount of the deferred impact fee that;

a) Includes the legal description, tax account number, and address of the property;

b) Requires payment of the impact fees to the city prior to final inspection or 18 months from the date of original building permit issuance, whichever occurs first;

c) Is signed by all owners of the property, with all signatures acknowledged as required for a deed and recorded in Thurston County;

d) Binds all successors in title after the recordation; and

e) Is junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

4. The amount of impact fees deferred shall be determined by the fees in effect at the time the applicant applies for a deferral.

5. Prior to final inspection or 18 months from the date of original building permit issuance, the applicant may pay the deferred amount in installments, with no penalty for early payment.

6. The city shall withhold final inspection until the impact fees have been paid in full. Upon receipt of final payment of impact fees deferred under this subsection, the city shall execute a release of deferred impact fee lien for each single-family attached or detached residence for which the impact fees have been received. The applicant, or property owner at the time of release, shall be responsible for recording the lien release at his or her expense.

7. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection.

8. If impact fees are not paid in accordance with the deferral and in accordance with the term provisions established herein, the city may institute foreclosure proceedings in accordance with Chapter 61.12 RCW.

9. Each applicant for a single-family attached or detached residential construction permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals under this section for the first 20 single-family residential construction building permits.

**Section 3. Corrections.** The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 4. Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

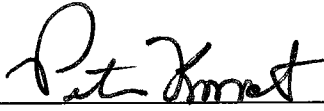
**Section 5. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 6. Effective Date.** This ordinance shall become effective five days after publication of the ordinance, or a summary thereof, in the official newspaper of the City.

**\*\*Signatures on following page\*\***

ADOPTED this 21<sup>st</sup> day of June, 2016

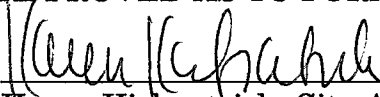
CITY OF TUMWATER

  
Pete Kmet, Mayor

ATTEST:

  
Melody Valiant, City Clerk

APPROVED AS TO FORM:

  
Karen Kirkpatrick, City Attorney

Published: 07-01-2016

Effective Date: 07-06-2016